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Legal Aid Society of San Francisco
Oral History Series

Thomas Rothwell

CHIEF COUNSEL AND STAFF ATTORNEY,
LEGAL AID SOCIETY OF SAN FRANCISCO, 1950s AND 1960s

Interviews Conducted by
Carole Hicke
in 1991

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Thomas A. Rothwell
October 1991

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INTERVIEW HISTORY

Thomas Rothwell was born in 1923 in San Diego, California. He grew up in nearby La Jolla, except for five years spent in France, 1931-1936. Graduating from La Jolla High School, he attended San Diego State College for a year, spent two years in the Army Air Corps during World War II, then went to the University of California, Berkeley, taking a degree in business administration in 1948. After working for several years, he obtained a law degree from Hastings College of the Law in 1951.

Professor Rothwell joined the Legal Aid Society of San Francisco in 1952 as staff attorney. In 1958 he became Executive Attorney for the Oakland branch of the Society, and returned to San Francisco as Chief Counsel in 1963. He left in 1971 to teach at Hastings and was for eight years a magistrate judge on the United States District Court.

Professor Rothwell was interviewed for the Legal Aid Society of San Francisco Oral History Series. The interview, which took place on November 20, 1991 in the San Francisco offices of Morrison & Foerster, was tape-recorded, transcribed, and reviewed by both the interviewer and Rothwell.

The interview was also recorded on videotape by Sandi Meyer of Morrison & Foerster, who was responsible for researching the history of the Legal Aid Society in San Francisco. Her material, codified with the help of Anthony Stearns, also of Morrison & Foerster, has been an invaluable contribution to the Oral History Series. This Series is part of the ongoing documenting of California history of the Regional Oral History Office, The Bancroft Library, University of California, Berkeley.

Carole Hicke
Project Director

January 1992
Regional Oral History Office
The Bancroft Library
University of California, Berkeley

BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name Thomas H. Rothwell

Date of birth Sept. 21 1923 Birthplace San Diego, Cal.

Father's full name Thomas A. Rothwell

Occupation Army officer Birthplace New York City

Mother's full name Louise H. Rothwell

Occupation Homemaker Birthplace New York City

Your spouse Wine D. Rothwell

Your children (one) Thomas B. Rothwell

Where did you grow up? La Jolla, San Diego County, Cal.

Present community Ozinda Cal.

Education B.S. (Business Admin) 1948; J.D. 1951

Occupation(s) Retired Air Force officer, lawyer, San Diego Judge.

Areas of expertise Retrial Practice, Trial Practice, Criminal Law, Evidence, Fighter Tactics, Air Logistics, Military Government.

Other interests or activities Discovery-Restoration-Exhibition of Historic Motor Vehicles and their operation.

Organizations in which you are active Alpha Xi Fraternity, 349th Evacuation Association, Overseas Carriage Club of America, Hastings College of Law.

[Interview on November 20, 1991]

I. BACKGROUND

HICKE: Let's just start with when and where you were born.

ROTHWELL: I was born in San Diego, California. I lived in La Jolla, and stayed there for . . . well, I was born in 1923, in September, remained there until May of '31 and then we went on a trip to Europe and came back in 1936. In the meantime, such education as I received was in French and then later in Italian and none in English. So, I learned to read and write French and Italian before I did English, but English being my native tongue, the California school system put me in the sixth grade in May of 1936 and sent me on to the seventh in June. So I had, well, let's say thirty days or thereabouts of education in English by the time I entered seventh grade. [Laughter]

I'll tell you what the French did with us. They took my younger brother and I and they put us in what amounted to the first grade and, of course, we were much larger than the kids around us. And then in a few months when we could speak a little bit, they put us in the second grade; and then in the third grade. And they just worked us up in less than a year to fourth grade level.

HICKE: Is that right?

ROTHWELL: No big deal to them. You know.

HICKE: Yes. Just the individual assessment by the teachers.

ROTHWELL: Yes. They just worked us up to grade level.

HICKE: Did you stay there in that area then while you were growing up?

ROTHWELL: In La Jolla?

HICKE: Yes.

ROTHWELL: Yes. I graduated from La Jolla High School, had a year at San Diego State College, and in 1943 I went into the air force, became an air force pilot and I was released from

active duty, I think it was November of 1945, went to the University of California, Berkeley, and in February of '48 I graduated with a degree in Business Administration. Then I went back to New York and I was the Assistant Sales Manager of an airfreight forwarding concern for a while, decided my education really wasn't complete from what I saw in the business world, came back to California and enrolled in Hastings College of the Law, where I got a J.D. in 1951.

HICKE: Why did you decide to go to law school?

ROTHWELL: Well, the simplest way to tell you is because that particular side of my education to me seemed to be lacking. I have a mechanical background. I probably would have been an engineer, I suppose, if I hadn't thought it over, but thank God I did. That's a more confining field than either business or law. I went to law school to flesh out my education, really.

HICKE: You mean for an intellectual challenge?

ROTHWELL: Yes. So that I would have a more rounded education. And, of course, I have been a lawyer ever since and never regretted it. If you want a war story about Hastings in those days . . .

HICKE: Sure.

ROTHWELL: I walked in with an unofficial transcript and I showed it to then Dean Snodgrass -- this was a couple of days before the school started -- and he looked at it, and I said, "If this were an official transcript, would I be admitted?" And he didn't answer me. He opened his door and he yelled down the hall, right down the hall like this, "Hey, Wendy, you got another chair in the first year class?" and then there was a bunch of rumbling around and finally Wendy says, "Yes, I can stuff one more in." [Laughter] So, Dean Snodgrass said, "Well, I guess you're in." So, that's how I got into law school.

At the end of the very first year, dear Dean Snodgrass and company flunked out one-half of us and two-thirds by the time we graduated. I think we started with 450 and graduated with 142. But, you know, all law schools were like that, or many of them were at least in those days, but no longer today.

HICKE: Things are different.

ROTHWELL: Things are different. We really don't lose anyone in law school today who really wants to finish. Some of them quit; some of them get disqualified for academic insufficiency but never take the steps to be reinstated.

I ran across with my wife just the other day a student I'd had, a little black student who was thrown out at the end of the first year and then worked in the Public Defender's Office in Martinez, I think, for a summer, came back, and the only way she could be readmitted was to take final exams over. She sat in my criminal law class, and at the end of the year, having spent an awful lot of time in my office, she made a B+ and she made decent grades from then on, became a clerk to a federal district court judge and now she works for HUD, the Department of Housing and Urban Development. So, there is an example of one student who made it, even though she had some problems in the beginning.

II. JOINING LEGAL AID SOCIETY IN 1952

Competitive Salaries

HICKE: What did you do when you got out of law school?

ROTHWELL: I went to work for a local law firm, Schofield, Hanson & Jenkins. Schofield is now retired; Hanson is now retired; so, the names have all been changed around nowadays. And, Tom Jenkins was on the Board of Directors of the Legal Aid Society when it was reorganized. He is, I think, still a Superior Court judge down in San Mateo County, or he is retired. But by virtue of his being on the Board, I heard about an opening at the Legal Aid Society, which seemed to me to be professionally rewarding, would enable me to spend more time in court and try to solve the problems of a great many more people than I was doing in the law firm. And in those days, largely thanks to Herbert Clark really, the Legal Aid Society paid competitive salaries.

HICKE: Why do you say thanks to Herbert Clark?

ROTHWELL: Because I think he simply insisted that the organization be competitive in every way that it could.

HICKE: Competitive with . . .

ROTHWELL: Salary-wise, service-wise, size of staff, all of it.

HICKE: Do you mean competitive with law firms, is that what you are saying?

ROTHWELL: Yes. I'll give you an idea. When I went to work for the Legal Aid Society, if you were married and you were at the very top of your class and on law review, you might get \$3,600 from a law firm. Most would get \$3,000. I started at \$5,000. I had less than a year's experience.

HICKE: At the Legal Aid Society you started at \$5,000?

ROTHWELL: Yes, I did. What was wanted was a professional organization that would use quality professional staff. They tried hard [to accomplish that goal].

Herbert Clark

HICKE: Well, since we're on Herbert Clark, could we talk a little bit about him? What were your impressions of him?

ROTHWELL: Well, he was certainly a leader of the bar with regard to non-client services, that is with regard to public relations, with regard to the bar associations and the public at large. He was certainly a major leader in the reorganization. Dave Silver, my predecessor, was actively involved with him in reorganizing the Legal Aid Society. I was the new boy who came on board after they got that finished. [Laughter] So, I was not actually involved.

HICKE: What do you think motivated him to this interest?

ROTHWELL: The welfare of the bar. He felt it should be a leader in making sure that people receive equal justice without regard to whether they could pay or not. The larger firms supported that idea.

Tensions Involving the Society

ROTHWELL: You can well imagine that within the legal system there are tensions. There have to be. Our whole society has tensions within it, and those tensions tend to work out to a result. There have always been, and still are today, tensions between, let us say, what Herbert Clark might wish to do and what a lawyer out in a local neighborhood might want. A neighborhood

lawyer often might oppose what we were doing on the theory that we were stealing business from him. Or on the theory that if he brought an action, we might defend it and he might lose, whereas if we weren't around, he might have won it. So, there's tension.

And then in addition to that, there's always been tension not only as to what a legal service organization does for clients, what clients it takes, what ones it doesn't, and also whether or not it should be engaged in what's referred to as law reform, or bringing change to the legal community, to the exclusion of serving individuals. There is tension between serving law reform goals and providing services to individuals.

HICKE: What was the position of the Legal Aid Society on these issues when you started?

ROTHWELL: Well, we simply followed the intake policy recommended by the National Legal Aid and Defender Association -- which was an arm of the American Bar Association. It tried throughout the country to promote national standards with regard to legal services. A perfectly good example would be NLADA constantly trying to get legal aid societies to make certain that when a lawyer spoke to a client, it was in a private office where no one could overhear the interview. That's a small thing, but when you're short of money, you know, it can be like providing legal advice to all the people locked up in the lockup for a criminal court. There was a time when one of the lawyers from the Legal Aid Society of New York walked into one of the jails, back there in New York, and said, "You're all my clients. I can get you a good deal." That's not adequate legal representation. So, the NLADA was constantly trying to promote national standards with regard to how legal services were provided for the poor and who would be eligible.

There was also generally tension between the Legal Aid legal service and community agencies, not personally but because the community agencies invariably help people with assets much higher than Legal Aid was allowed to accept. So, you'd have situations where a person who could plainly pay, or whose case would plainly generate an adequate fee in which an agency might refer that person to us, and we'd have to politely indicate that we'd have to refer him on to the Bar for referral to a lawyer. And that sometimes created tension with the agency.

I don't know why we could call ourselves the local Legal Aid Society unless we used local referring agency standards instead of our national standards. On the other hand, if we took their view of it, we'd have half the bar trying to dispose of our services permanently, you see [laughter]. So, any legal service organization is at the center of all of these tensions in society.

HICKE: So, was it helpful, then, to have these NLADA standards established?

ROTHWELL: Yes. Certainly. San Francisco was used as an example of what can be done in a short time with the support of the bar. The NLADA used us as an example of a good office that was able to improve rapidly because of the support of Clark and the other bar supporters.

HICKE: Oh, is that right?

ROTHWELL: Oh yes. For years they did. Then, of course, as you know, when the War on Poverty came along, everything changed. A great deal of money was injected into legal services, and when you get a lot of money around [laughs], you get a lot of disputing over its use.

III. WORK OF THE LEGAL AID SOCIETY

Organization

HICKE: Yes. OK. Well, let's get into that in a little bit. But let me ask you first: what were your first challenges and responsibilities when you started in 1952?

ROTHWELL: December of '52. Well, I just was given an office and a desk and I simply plunged into taking whatever problems that occurred that were within the eligibility rules and became counsel for those people. Whatever that involved. An ordinary case load -- let's see. In those days there were three of us, the chief counsel and two others: Elda Pardini and myself.

Elda Pardini had been with Legal Aid since the early '30s or late '20s, and she stayed until she retired, I think in

1970. All those years. And I think when I came on board we must have had somewhere in the neighborhood of 4,000 people a year, of which perhaps about 100 cases a year per lawyer were in court, and the rest of them were advice and referral, settlements -- what have you. And from the time that I came there the case load grew somewhat. Up to 5,000, 6,000, until I left in 1958.

My first service was '52 to '58, as a staff attorney. And in 1958 I went over to Oakland to hopefully accomplish the same kind of reorganization over there -- which was partly under way when I went over -- as their chief counsel. They called that person the Executive Attorney. I was the first full-time Legal Aid attorney Alameda County ever had. I was there from, let's see, '58 to '63. When I left, we had three full-time attorneys, and about 4,000 -- about the same case load as San Francisco had had when I joined its staff. Then I came back here as the chief counsel in San Francisco. In the little printout that you sent me, there are some references to the manner in which I was hired. And the answer is they had a committee to screen applicants, and Moses Lasky -- you don't happen to know Moses Lasky, do you? He's a very able trial lawyer.

HICKE: Sure.

ROTHWELL: Moses Lasky was, I think, the chair of that committee. But at any rate he interviewed me, and thanks to his intervention, I was selected over the other applicants.

HICKE: You're talking about becoming chief counsel now?

ROTHWELL: Chief Counsel. Yes. Here. In San Francisco.

HICKE: Right. This was in the '60s.

ROTHWELL: In '63. Yes. About September of '63, I think.

HICKE: OK. Well, let's go back to the '50s now.

ROTHWELL: All right.

Funding: the NLADA Grant; OEO Funding

HICKE: How was the Society being funded then? By whom?

ROTHWELL: They had a problem during the reorganization with getting the then-Community Chest to provide support. But essentially,

over the time that I was there, in round figures, about half the support came from the Community Chest, later the United Bay Area Crusade. And half of it came from lawyers. And the large contributions were from the large firms, tapering on down to the very small ones. Never did we have the entire membership of the bar supporting Legal Aid -- do not have now, and probably never will have. But the large firms did. They were contributing substantially.

Their theory was that this worked better than having their own lawyers do these things pro bono. It saved them time and Legal Aid clients were talking to people who were accustomed to handling the kind of problems that they had. That was the theory of the reorganization. It seemed to work.

HICKE: What kind of fundraising efforts did you or other members of the Society have to undertake?

ROTHWELL: Well, remember that if you're a part of the United Bay Area Crusade or now the United Way, it's a condition of membership that you not raise any other funds except as permitted by conditions of acceptance. So the only fund raising we did was among lawyers. Period. Otherwise, we would not remain eligible for UBAC funding.

HICKE: You mean from other grants or foundations?

ROTHWELL: Well, in those days there weren't any grants or foundations for legal services. That was a no-no. Later, there were some -- we got the first later on in 1965. We got the first National Defender grant ever made in the United States from the National Legal Aid/Defender Association Fund that had been set up to improve criminal defense services. That's the way full-time lawyers went into the federal court instead of pro bono, part-time lawyers to provide representation to people charged with federal crimes. I skipped ahead to 1963.

HICKE: Yes, that's an important part, I think. Maybe we could elaborate on that a little bit. How did that come about?

ROTHWELL: When I came over here in 1963, I went looking around to see what was the area of defense of people without money that required the most improvement, and I came up with that as being it.

HICKE: With what?

ROTHWELL: Representation of people charged with crimes in the federal courts who didn't have the money to obtain counsel. The reason was not that they didn't get good representation, but that the representation was, if you will, spotty. One day you'd have an able trial lawyer up there who would provide excellent representation, and the next day you might have somebody who wasn't quite that good at it or didn't feel he could spend the time, etc., etc. You didn't get uniform representation.

HICKE: Right. Right.

ROTHWELL: There was a study made by Stanford Law School in which they compared what the panel that represented the criminal defendants pro bono did -- what its results were -- and what retained counsel did with regard to how many were convicted, how many were found not guilty, how many went to prison, how many got probation. That sort of thing. And, in round figures -- this is from memory now -- in round figures the panel had statistics that equaled about half of the success rate of the retained lawyers.

It was said that the reason for that was that all the hopeless cases went through the panel. For example, if you have a man charged with illegally entering the United States for the third time, and [laughter] got him to represent, you really couldn't get a not guilty judgment before a jury in that kind of a trial if in fact he did so enter. He's going to be convicted. All those statistics, you see, tend to weigh down the public defender's record.

Once we got started, which was I think the first of January of 1965, we also kept the same statistics. And when you compared us with the private bar, in all categories we did at least as well as the private bar and in some of the categories much better. Including having to accept all those hopeless cases. So, I would say that was a substantial improvement over what we had before.

HICKE: So actually, you furnished public defenders.

ROTHWELL: Yes. Full time. They worked for the Legal Aid Society. Yes. That's right. It was a private defender really. What they're all called is public defender generically. But they're not all public in the sense of being public employees. Some counties have in effect private defenders -- less now than formerly -- in which the county simply makes a contract with a lawyer. You get so much money and defend everybody. Get

whatever staff you need with this money, but don't ask us for any more. Or as I used to repeat since I heard it so many times, "Here comes Rothwell. He wants more money to get more crooks off." [Laughter]

HICKE: Well, I want to hear some more about the program. You said it was funded by the . . .

ROTHWELL: Luckily, I had that idea before NLADA had any money. But the Ford Foundation gave some money to NLADA to provide defender services where they were needed around the country. And so we got right in on the ground floor with an application.

HICKE: How did you know about it?

ROTHWELL: We belonged to NLADA. They have a newsletter, you know.

HICKE: Yes.

ROTHWELL: So we got right in on the ground floor, and we got the first grant. We also, surprisingly enough, I think, for San Francisco, made the first application for OEO [Office of Economic Funding] funding, sometime in the fall of 1964, before they ever had a neighborhood legal assistance program or anything else.

HICKE: Did you read the newsletter again? Or how did you know about that?

ROTHWELL: I don't now recall how I found out about it. But it might have been through NLADA. That was part of the so-called War on Poverty. And I think there was public news about that.

Public Defender Program

HICKE: OK. That's another thing we want to get into. But back to the public defender program.

ROTHWELL: Federal public defender. Federal. There's a state public defender who's an elected officer according to the charter of San Francisco. He represents people charged with crime in the state courts.

HICKE: Was that going on already at the time?

ROTHWELL: That started, I think about 1916 or so.

HICKE: Oh. OK.

ROTHWELL: It was one of the first offices. As a matter of fact, one of the early public defenders, if not the first one, and it may have been unless my memory fails me, was himself convicted of murder. [Laughs] One of the first public defenders was locked up in San Quentin, where he was very popular as a lawyer for those incarcerated in there. That did not happen to me.

HICKE: [Laughter] Fortunately.

ROTHWELL: I didn't decide to kill anybody with my new knowledge. Incidentally, I was not a criminal lawyer at the time that program got started.

HICKE: Oh, that's interesting.

ROTHWELL: And so I received a degree of flak from the criminal bar. And I must say that some of the lawyers that supported the idea were essentially defense lawyers in business litigation -- antitrust defense lawyers. People who tried [cases to] juries and were able lawyers. I remember one of them said, "Well, you know, I served on that panel, and I pled my client not guilty. And I had a jury trial. And the jury acquitted him. That's my only criminal law experience." Now what makes the difference is do you have a decent trial lawyer, not whether it's a criminal case or some other. So, you can understand I was under the gun to do the same thing. [Laughs]

Once the program got started, although we had a staff that was experienced that we hired, I went up there and tried a theft from a bank -- really, if you will, an embezzlement but by a teller. I tried that to a jury and my client was acquitted, and that was my first felony jury trial.

HICKE: Were you reading the book just ahead of the trial or something?

ROTHWELL: No. No. I had been exposed to courtroom proceedings.

HICKE: Yes.

ROTHWELL: And as you know, I've taught trial advocacy, pre-trial advocacy, evidence, and criminal law. I became a member of the faculty of Hastings in 1964 in the fall semester, just before the Federal Defender Program got started. Once we got that started, the dean got me on the phone and said, "Come up here and teach criminal law. The professor that does it is ill. And since you got a program started, you must know

something about it." [Laughs] So, in the spring of '65 I taught criminal law at Hastings.

HICKE: Well, OK, here you are at the Legal Aid Society, and you've got this public defender program. Is it the same thing as the Legal Aid Society, or is it a branch of the Legal Aid Society? How is it placed organizationally?

ROTHWELL: A branch. It was the same organization. You ask the question because that's not the custom out here on the West Coast. We were the first Legal Aid Society or the first if you will private defender foundation to commence a program on the West Coast. It is more common on the East Coast, where these organizations are older. The New York Legal Aid Society takes all the civil and all the criminal cases, state and federal. It's not unheard of.

HICKE: OK.

ROTHWELL: But they have different divisions. And seldom do you find lawyers who can serve in both. I've had experience with that. Ordinarily, the people on the civil side stay there, and those on the criminal side also do, although there have been some cases of people switching from one program to another and doing it successfully. But not many. For one thing, they don't want to switch, generally.

HICKE: Yes. It's difficult, I'm sure.

ROTHWELL: Well, they just -- whatever they're doing, in order to stand it they have to like it and believe in it. And they don't like the idea of change.

HICKE: Was everybody else in the office at that time doing both also?

ROTHWELL: Nobody was. Everybody in the civil office continued doing exactly what they did do. We opened a brand new office and staffed it with criminal lawyers.

HICKE: Oh. OK. That's what I'm getting at.

ROTHWELL: Physically, we had two separate offices following the beginning of that program. A civil office downtown . . .

HICKE: As Chief Counsel, you went into the public defender part of the office?

ROTHWELL: No. I tried a few criminal cases, and I continued to try an occasional civil case to keep my hand in. But, mind you, I was the only administrator.

HICKE: You were the management.

ROTHWELL: I was the management. And the fund raiser. And the grant writer. And the liaison officer. The girl Friday, if you will.

HICKE: OK. Since we're on this, where were the offices physically located, the two of them?

ROTHWELL: Well, the main civil office was at 690 Market Street, which is at the corner of Market and Third, in a building which stood through the earthquake, the American Savings & Loan building now. And the Federal Defender office was right inside the courthouse on the 17th floor. We got the federal government to give us the space free. You become a good scrounge, let's put it that way. [Laughs]

HICKE: You have to be to make a success of that, I'm sure.

ROTHWELL: Oh yes. What we had to do was try to take every dollar that you could get your hands on and put as much of that as possible into staff salaries so that we could have as large a staff as possible to meet the case load. We'd try to scrounge everything else that we could. We couldn't get everything free, but we always tried. And we got little grants here and there for furniture, you know, and for books and this sort of thing, so that we could put as much as possible into providing staff to meet the case load.

HICKE: Was somebody in the federal courts particularly helpful?

ROTHWELL: Well, the bench itself.

HICKE: I mean any one person.

ROTHWELL: The chief judge. Stanley Weigel was on our board of directors. Judge Weigel, he's a senior judge now and still sitting. George Harris was the Chief Judge. Alfonso Zirpoli, also a senior judge now. Those three. And Sam Stewart, our then-president, who was Executive Vice President and General Counsel to the Bank of America. He was A.P. Giannini's lawyer. He was President of the Legal Aid Society when this took place. And he was very helpful in getting it done. If you could get him -- you haven't ever met him, have you?

HICKE: No. But he's on our list, I think.

ROTHWELL: He's a man of, I think you'd have to say a very commanding voice. If you didn't have the panes in your windows exactly right, he'd be able to break them just with his voice. He had that commanding a voice. And he was a very, a very good tactician. I mean he knew just where to put the pressure, and he was very helpful. Really, he did a lot in the pre-OEO days. He was also, I think, the first general counsel of a major corporation to go through the chairs at the bar association. He was treasurer and then secretary. And then he had to leave because his duties at the bank, I think, made him. I think he was the number two at that bank for a little while. I may be mistaken. But his duties at the bank changed, and he had to leave his bar association activities.

HICKE: What was his interest in the Legal Aid Society?

ROTHWELL: Same as Herbert Clark's. Public service. Equal justice. Representation of the poor. All pro bono work. They didn't get anything from it, except the brickbats of those who were opposed. There is a system -- Canada has it, I believe, although I haven't had occasion to look and see recently -- but in the Canadian system what Legal Aid does is simply have the government provide money to the lawyer, very much like Medicare, if you will.

End Tape 1, Side A

Begin Tape 1, Side B

ROTHWELL: Very much like Medicare, and many lawyers are in favor of that. There are pros and cons with regard to that system. For example, it's easier to make the point with criminal services. If you have a staff that's there all the time, properly paid and properly trained, they're going to be quicker and be able to handle a greater number of cases for the same amount of money as in the other system. That's the advantage of a full-time staff.

The advantage to the Medicare system is that you get, by and large, a cross-section of the bar and you don't have the problem of the morale of a full-time staff. You have to keep them at a fever pitch.

The staff can't simply become an organization that just goes through the motions. Actual morale will show up in how many cases they've tried, and what results they get from those

cases, what their acquittal rate is in relation to the private bar and other public defender offices. You can soon tell whether something's going wrong. As far as I can tell it never did in our organization, and that office is still a good office today. It became publicly funded in 1971 and it's a public defender now instead of a private defender organization.

HICKE: Does that sort of fill in the gap, Sandi, about the federal public defender?

MEYER: Yes.

ROTHWELL: Be sure to say federal. It was federal only. Yes.

MEYER: Yes. I actually wondered how many attorneys there were at the office.

ROTHWELL: Three. Yes. They handled, in round figures, slightly over 100 cases a year, all court cases. And in the civil office also something in excess, 100 court cases, sometimes as much as 150 civil court cases a year. And when the OEO grant came along, our OEO staff in effect were public defenders for both civil and criminal actions out in the Juvenile Court. And there they had a substantial -- there were four of them, and they had, oh, 4,000 cases a year or better. They picked nearly all of them up in open court, as would public defenders in a public defender system. Very few cases in the Juvenile Court program came any other way except in open court. You see, we had everything in the Juvenile Court with the OEO programs -- civil and criminal cases. So that was a substantial addition to the case load for four more lawyers. So we ended up with eleven lawyers, including me, which would be four in juvenile, three in civil plus me. But I had all the administrative duties, so I couldn't provide an awful lot of assistance. And three in the federal criminal defense office. And that produced about 11,000 cases, of which in the neighborhood of 1,000 say 500 or 600 civil and 400 or 500 criminal cases, were in court. And then nearly all the juvenile cases -- not really all, but say over 80% were in court. So that we had a substantial trial load -- I think one of the heaviest among the OEO organizations.

HICKE: Back to the original Federal Public Defender Office. You started with the grant. How was it funded after that?

ROTHWELL: Under something called the Criminal Justice Act, which provided for a foundation defender and reimbursed at hourly rates.

HICKE: Was this federal?

ROTHWELL: Yes. Federal money. What you did was you got a voucher at the end of the case, and it was approved by the court, and the administrative officer of the courts paid it. So it provided a businesslike efficiency. We got a grant to start, but once we were operating, we had to operate on the allowable hourly charges, which meant that we had to pay secretaries, investigators and all expenses out of whatever the lawyers produced in hourly charges.

HICKE: Was this in effect already, or was this passed later?

ROTHWELL: It came along just about the time we got the grant. The grant was intended to give us start up money and permit us to integrate into the voucher system over a three-year period, with decreasing grant money each year. Before the grant was over we were self-supporting on Criminal Justice Act money. That was an efficient system. The only difficulty would be that Congress would have to amend the rates upward as inflation progressed, you see. And if it neglected to do that, then the first thing you know you wouldn't be able to operate a program. And of course they have amended the rates upward, but they are much less than the billing rates of private lawyers, and have not kept pace with inflation.

HICKE: Did you have to deal with members of Congress, then, to keep reminding them every year?

ROTHWELL: No. Well, see, the program went from '65 to '71, and during that period of time we were able to operate on the money that we generated and provide a service which was superior in terms of results, if you were to compare us with other defender offices. Or to the private bar. That system worked well also in the case of private counsel coming into a case with an indigent defendant. And they'd be paid under the same system. They'd be paid with a voucher. This takes place when there is a conflict of interest. Let's say you have two defendants who have the same lawyer, how does he take care of the defense that the other defendant did it for both of his clients? You see, there's a conflict. So you need another attorney who can represent one defendant and, in that case, you can have conflicting defenses without a conflict of interest in the lawyer's decision-making process, you see.

HICKE: Oh, yes.

ROTHWELL: So the voucher system takes care of that nicely. The state system has panels of lawyers that are paid that way. They are paid with county funds to provide conflict representation to the defendants.

Law Reform Versus Individual Representation

HICKE: OK. Is there anything else about the public defender program that we need to talk about?

ROTHWELL: Well, in mid 1971, it became funded wholly, staff salaries and all other expenses without vouchers. It became a public defender, as I like to call it. The option of continuing as a community defender was not exercised by the Legal Aid Society or the bar. In my view, that opportunity should have been pursued. Because what that provides is an organization that does more than just the criminal work. So that you can take the people who are involved on the criminal side [defendants], and then after they're finished with their criminal cases, you can send them over to whatever other facilities you have and take care of the rest of their legal problems, try to turn their lives around. So they get a complete package. But the bar didn't seem interested at that time in that sort of thing. And there was, as a matter of fact, very little interest in representing individuals during the OEO years. The emphasis was all on taking cases because of the social impact of the result on the society -- bringing change to society. So, there wasn't much interest in individuals.

Neighborhood Legal [Assistance], as you may know, was funded to do law reform work. And that was a much bigger grant than we had, and a much bigger budget also than we had, including all our programs. And then OEO, as you probably know, came along and decided that we ought to stop representing individuals and devote all of our efforts to law reform. Shut down individual representation in favor of law reform. It reached a point at which an OEO evaluator sat in on a trial up at the Juvenile Court, the Legal Aid staff attorney had a full trial, and at the end of it the sitting judge acquitted, that is, found the defendant not guilty. OEO was furious. They put it in their report in writing, too. They were just livid with rage. They said, "You should have found a way to make that judge find him guilty, so he could have had a case on appeal to make some law reform law." Now, you know . . .

HICKE: That's interesting.

ROTHWELL: Well, it was a young individual with little or no experience that they had hired, you know, and he was bright-eyed and eager. The end justifies the means. We're going to have a perfect world if we can get all legal services devoted to law reform. Then we'll simply refuse to serve the individuals who don't serve our purpose. Now, I'd be the last one to say that you don't need litigation that tends to bring reform. But I'll be the first one to say that you cannot have that to the exclusion of individual justice, or you just don't have a system that's responsive to the needs of the society. Plus, you get law reform automatically if you can provide adequate representation to individuals for the simple reason that you run across things that shouldn't be going on and then you try to take care of those things. If you could do that with everybody, you'd get your law reform.

We don't even today get everybody who's dropping through the cracks, if you will. On the criminal side it's much more so. Very close to all of them. On the civil side, I don't know. Not really. But, anyway, it's interesting to notice that now that the Legal Aid Society has changed its spots to suit OEO and is engaged in particular kinds of litigation and law reform, Neighborhood Legal is now taking the bulk of the ordinary service cases, which it wasn't set up to do.

When it started out, "We're going to do law reform, and we're going to leave service to the Legal Aid Society." Then they got mad because we were providing that service. That's an honest evaluation. They didn't put it in that language. But the language was that we should not be doing the same thing as Neighborhood Legal. Well, then when they succeeded in that they had to turn around and get Neighborhood Legal do service cases to take up the gap.

Now, it seemed to me to be, well, government bureaucracy at its worst [laughs], but in the long run it worked out. To me, a terrible opportunity was lost during the War on Poverty, an opportunity to do an awful lot that there wasn't money to do before, and much of the new money got spent, really, on politicizing the whole process. It wasn't politicized before to the same extent as it was after OEO. So, you get more and more -- if you will -- more and more and more into overhead, people not devoted to case work, people negotiating, people looking for grants.

People have often said, "Why don't you turn around and fight these people by doing the same thing that they did?" Well, that meant abandon your clients, abandon your intake standards, lose funding that has been given to you on the condition that you do it a particular way. When you have over 100 cases per year in court per staff attorney, there's not time to do additional law reform work unless you can get more staff to do it.

The Office of Economic Opportunity Grant: Juvenile Court

HICKE: Let's back up and get this OEO story from the beginning. We've been alluding to it, so tell me how it came about.

ROTHWELL: We made an application in '64, the first in San Francisco. The government funded a lot of others, did not fund ours.

HICKE: You made an application for what?

ROTHWELL: For a grant from OEO to add additional staff and legal services to the main civil function of the Legal Aid Society.

HICKE: OK. What was the Office of Economic Opportunity actually doing at that point?

ROTHWELL: Funding legal service programs. It was taking applications.

HICKE: OK. And that was Johnson's War on Poverty?

ROTHWELL: Yes.

HICKE: Part of it. And who was running it?

ROTHWELL: Sergeant Shriver, whom I think really meant well. I'm not saying and do not maintain that OEO did not do some good. It did. It just seems to me it could have done a lot more if it had not been so political. But, anyway . . .

HICKE: You made an application.

ROTHWELL: We did.

HICKE: And it was turned down?

ROTHWELL: Others were granted. Alameda got a grant fairly soon after that period. In fact, I think they got one in 1965. But we did not. And then we learned that another organization was

being set up, and it was -- Neighborhood Legal. And it was given a grant. A large grant.

HICKE: Do you know some of the whys and wherefores here?

ROTHWELL: No. I really don't. Because we were sort of left out of the loop, if you will. But at any rate, after it got started, they finally did give us a grant. They gave us a grant for work in the Juvenile Court, and I believe that must have started about the middle of 1967. We applied in '64; we got a grant in '67. In the meantime, they'd funded Neighborhood Legal to do all law reform work. So, in our application for OEO money -- amended one, if you will -- for the Juvenile Court, which was our second choice following Federal Criminal Defense for a place that needed legal services for individuals. Our understanding was, since Neighborhood Legal has a large grant for law reform work, we'll do the service work. And Lord knows we did. We took everybody.

Do you know who goes into the Juvenile Court? There are three categories of kids involved in the Juvenile Court: those that are charged with violating any law of the state or the United States, or if you will criminal laws, although we don't call them criminal defendants; those who are beyond parental control, the typical teenager. And those who need treatment, care or supervision, these are child neglect cases.

We took them all. It wasn't exclusively a criminal program if you want to call juveniles criminals. We took them all. And I think that's the only time that's ever been done in San Francisco. The public defender came along after us and started taking, and still does take those charged with crime.

I don't think the other kids are taken care of by people standing in open court, so that a case can now get through court without being exposed to a lawyer. By that I mean the possibility of talking to and being represented by one. The best intake in the world for high-volume courts is to have somebody right there in open court. And then they don't slip through the cracks. If you made an applicant apply downtown instead of in open court at the Youth Guidance Center where OEO staff was located, cases would fall through the cracks. Incidentally we had to scrounge office space from the county because OEO had all this money [laughs], and we didn't, so we got this space free -- but, at any rate, nobody slipped through the cracks if they were involved with the Juvenile Court and there was somebody in open court who could provide representation.

Then we do have another problem -- we mentioned it before -- and that's providing counsel for those with whom you have a conflict. Let's suppose it's someone in need of treatment, care, or supervision. Well, if we represent the child, who's going to represent the mother and father? So we used the Barristers' Club and other private lawyers as conflict lawyers, and they didn't get paid anything. They had to do it pro bono. Those cases were not considered criminal cases at that time by the system that put the public defender in there, so, no reimbursement from state or county funds.

HICKE: You're talking about the public public?

ROTHWELL: I'm talking about the State Public Defender. He's in there now, not the Federal Defender. No. The Federal Defender program involved only federal criminal cases. The State Public Defender is involved with state criminal cases and now juvenile criminal cases. In those days, we had them all, including the two categories of civil and one criminal. I'll give you an idea how a program actually works. I think that a good example -- do you remember some years back the toll boxes were taken out of the municipal railway streetcars and buses? Well, that came about because a juvenile was charged with having murdered a bus driver out in Hunter's Point. And so a member of our staff was appointed to represent him, and he came to the conclusion that he hadn't done it. So he gave the boy a polygraph test, which he passed. He was some other place he claimed when the crime occurred. All the alibi witnesses were given polygraphs, and they all passed.

So, we took the results to the Juvenile Probation Officer who was prosecuting the case and said, "Look, this kid didn't do it." Now, you have to understand bureaucracy to understand what I'm about to say. The answer we got was, "Well, it doesn't really matter whether he did it or not, you've got to convince him to plead guilty, because he needs help." Now, of course, if we did that, that would mean that the real culprits would probably go free. Nobody would bother to investigate who really did it.

So, we set the matter for trial and tried it, and we used a criminal investigator whom we had hired after he had been represented at the Federal Criminal Defense office by me, and whose life had been turned around. We used him as a criminal defense investigator. He went out and found an eye witness to the actual theft and murder of the bus driver who could testify that this defendant of ours was not the person who did it, and the ones who did were four in number, and was able to

describe them. So the boy was acquitted. After the trial, the police went out and found the ones who really did it, and tried them for murder. None of them were juveniles. We didn't represent any of them. So, you see, that's justice in action. The probation officer meant well, but was so involved in social welfare work that whether a person is guilty of murder or not was not very important to him. The main thing was just any excuse so we can keep him here and do something for him.

HICKE: He would have a record all his life.

ROTHWELL: Yes. Well, they seal all those records. But, people find out about them anyway, I assure you.

HICKE: And how would he have felt, too?

ROTHWELL: Well, to me, that case is an awfully good example of how eternal vigilance in any democracy is absolutely necessary. Large bureaucracies tend to go astray no matter how well-motivated they are. Large numbers of people are involved. They make mistakes. You can't reform the law representing individuals so you don't need individual representation. It's a nice goal. It has its place. But it won't do the whole thing.

HICKE: So, this was really a major sort of stress during the '60s: between this sort of idealism and individual representation.

ROTHWELL: Oh, absolutely. And the stress -- you've heard this, I'm sure, in the recent past. We aren't through with the issues and the tensions generated in the '60s yet. They're still around. They're not quite as visible, but they're still around.

HICKE: I suppose the OEO represented, in a sense, the same sort of idealism that was going through the law schools and the students who were coming out with . . .

ROTHWELL: Absolutely. Well, the example today, and when I say today, I mean the last few years -- because I haven't been in a position to actually experience this in the last several years, but recently, let's say -- I used to commute with one of the hiring partners of one of the large firms. And he used to grouse, because he'd go back to Yale and he'd come back and say, "Gee, this fellow's so well qualified, but he wants to do pro bono law reform work, and he wants us to put him in every division of the firm before he decides which one he'll stay

in, and allow time off so he can do pro bono law reform work." Then he'd say, "I'm getting just sick as hell with these kids who don't know what they're talking about." [Laughter] Well, the leftover from the '60s is that the large law firms do a lot of pro bono work today. That's good.

HICKE: That's right. Yes.

ROTHWELL: But the thing is that the pro bono work they do is work that the lawyer wants to do and not after a search to see where legal services are most needed. They do what they want to do, and they will select clients to be able to do what they want to do. There's a difference between that and -- not to say that we don't need it -- we do -- but there has to be a balance between that and providing individual representation to people who simply are going to lose something like that juvenile who was charged with murder. It makes an awfully good example. The same thing is true -- well, suppose you have an automobile accident and you have five defendants, and one of them doesn't have any insurance. Without a lawyer, the plaintiff will probably suffer a miscarriage of justice because the other parties will manage to blame it on the one without insurance or a lawyer. [Laughter] That's an every-day example.

We used to take those cases. I tried about a thirteen-day jury trial in a case like that once for the Legal Aid Society, way back in the '50s. And the net result was the plaintiff won a big judgment and got it against all the defendants except the uninsured one. They found mine not involved, and gave him a judgment for the defendant. One of the insurance defense lawyers never spoke to me again so long as he lived -- talk about tensions. Here's this free lawyer up here messing up my case. You know. [Laughter] That's a tension. I once tried a case against a member of my board of directors. He filed a collection suit. The person who was on the other end of it was indigent. I went up and tried the case against him, and I won. He went to the board and tried to have me fired. The board laughed him out of the room and he left the board. [Laughs] The board did the right thing. They said, "That's what Rothwell's for." So, see, there are tensions.

And I'm not saying there shouldn't be. There have to be these tensions. They cause decisions to be made. But I think it's fair to say that I was disappointed in the thrust of OEO as being idealistic, fine, but rooted in what the real world is like, no. Or, with some of them, we don't care what the real world is like, we're going to use the real world to get

our result. Now, that, I feel, is unethical. It isn't legally unethical. But it violates my ethics. I think it would violate Herbert Clark's ethics. I think it would violate the ethics of large firms then.

HICKE: Let me ask you how you managed this. Did you make a separate branch for the Juvenile Court?

ROTHWELL: Yes. We had a branch office up there.

HICKE: And was that a separate office too?

ROTHWELL: Yes.

HICKE: Where was that?

ROTHWELL: It was across the street from the Youth Guidance Center in San Francisco.

HICKE: And who staffed it, or how many people?

ROTHWELL: We staffed it. Four. The man that headed that office was named Jenkins, and he's an interesting person himself. He went to England before World War II. Got his secondary education in Britain the equivalent of a high school education. He went into the British army and fought the full length of Europe into Germany. Transferred into the American army. Came back here to California, where he was originally from. It was the war that kept him there. He went to live with a relative, and when the war came along he couldn't get back. Went to work, I think for Standard Oil out in the refinery out in Richmond. Took a correspondence course in law. Passed the bar examination. And turned into one fine lawyer.

HICKE: What's his first name? Do you recall?

ROTHWELL: William. A very Atlee Laborite type socialist.

HICKE: And how did you find him and get him?

ROTHWELL: Well, I got him when I was over in Alameda. He was a friend of -- I was the first full-time lawyer over there. The second one was a guy named Russell Koch. And Russell Koch was on the County Democratic Central Committee and all these people were interested in Democratic politics. One of them was Bill Jenkins. So I was introduced to Bill Jenkins, and when we had an opening for a third staff lawyer, Bill Jenkins became that

staff lawyer. When I returned here to San Francisco, the next time we had an opening, I got him over here. He was a good man.

HICKE: And was that even before you opened an office out there?

ROTHWELL: Oh yes. He was in the main civil office. Well, somebody left the office and we put him there. Yes. He had had oh, let's see, '66 . . . he'd probably had five years experience at the time that OEO came along, which is why he was given that position.

A Case of Rehabilitation

HICKE: What other questions do you have about the Juvenile Court, Sandi?

MEYER: Actually, I have one more about the Federal Public Defender Program. What was the most positive contribution of the program?

ROTHWELL: Well, there were the ordinary contributions of increasing the service to people who couldn't pay fees, so that it would at least equal that of the retained lawyer. That in itself was a Herculean undertaking. But there was something else too, and that was because we had this civil background downtown, and with enough people with that background around, we were able to take some of those criminals and turn them around. Turn their entire lives around.

You might wonder after the story of woe I've been telling why I stayed on doing this so long. And the answer is that you were genuinely able to change the lives of a substantial number of people you dealt with. Enough to make it worthwhile. And the Federal Criminal Defense Office did that.

I'll give you an example. I'll tell you the story of the man who later became the criminal investigator for the Juvenile Court.

That particular man came up in open court charged with -- I think it was his fifth felony. He'd been charged with arson, aggravated battery, rape, three interstate transportations of a stolen motor vehicle -- which is a federal crime. That's six. He was on his sixth felony. He'd never been given probation. And one of our criminal lawyers, a federal judge's former law clerk just starting out, got me by the lapels and he said, "Come on. I know we have to take

everybody. This is a professional office, we take what we get. But I can't stand this guy. Just for once, break the rule."

I thought that over and I thought, well, if I'm able to provide a special service that this young lawyer might never think of, it might be a great aid to him. So, I broke my own rule and I took this fellow.

I sent our psychiatrist down to see him. We had a consulting psychiatrist, who in those days was Dr. Werdegard, you don't know who that is -- the former head of Public Health in San Francisco. We sent him down there, because this man was supposed to be mentally retarded. And he found that he was bright average. He wasn't mentally retarded. That's what made the difference.

His history was he was convicted of arson and put in a home for the mentally retarded in Alabama at the age of ten. On hindsight, he was an orphan and he remembers the judge saying, "Don't worry, son, we're going to put you someplace where there are nice, green lawns." That may be why they put a person who was bright average in a home for the mentally retarded. But, at any rate, that's where he was put. He then escaped at about age eighteen and came to California, got caught and locked up in Sonoma, which is a home for the mentally retarded and then sent back to Alabama. Graduated from their high school for the mentally retarded right there in the institution at the age of twenty-one. He then took his brother's identification and enlisted in the U.S. Air Force. On his first leave after basic . . .

End Tape 1, side B.

Begin tape 2, side A.

HICKE: OK.

ROTHWELL: He went down to New York, got convicted of aggravated battery. The air force found out. Discharged him, and I think commendably gave him an honorable discharge. When they found out he was mentally retarded they thought, well you know, he's doing quite well for a person who's mentally retarded. So they gave him an honorable discharge.

What do you do with that kind of a background to get a job? Just think about it for a minute. He went to work for a

carnival as a roustabout. Within a short time he was living in the parent's trailer with a thirteen-year-old girl.

This particular individual who had annoyed our young lawyer was extremely annoying to everyone. The marshalls were mad at him. He had a grating tone of voice. He was just obnoxious. He was the kind of person that would just revolt you. Well, if you were the parents, how would you get rid of him? He was about 6'3" and they were little tiny people in the circus act. How would you get rid of him, how would you evict him? In Illinois they turned him over to the police for statutory rape. And he got the maximum sentence for statutory rape. Nothing happened to the parents. There's the rape conviction. So you've got arson, rape, we know about the battery, a drunken brawl. Three interstate transportations of a stolen motor vehicle.

Why would he do that? Does that hurt anybody, stealing automobiles? It hurts the insurance company but there's no hurt physically to an individual. So you see, there must be some reason that he was doing those things. And the answer was he had a rheumatic heart and he couldn't get medical treatment in Alabama, a single white person. So he'd go and commit a federal crime, go to a federal prison where he was a bigshot, "I'm a five-time loser, give me my medicine or I'll file a writ on you." That kind of stuff. That's the way he got his medical treatment. There was no way to have him found not guilty. The problem was: what are we going to do at the sentence hearing? The probation officer said put him in prison and throw the key away.

I came into court the day of the sentence hearing and the judge says to me, "Rothwell, what are you possibly going to have to say for this fellow? Your own psychiatrist says lock him up and throw the key away."

That was a surprise in a legal sense. My psychiatrist had told me the prison system couldn't help him and he's bright average. The only way he'd ever get help is outside. So I said, "That's not what he told me. I'm surprised, so let me have a continuance."

HICKE: Wait a minute, the psychiatrist told you one thing and he told the judge another?

ROTHWELL: Well, that's common, yes. I was naive. I should have gotten a written report from him, but I trusted him. Actually he helped the client a great deal, because I got a continuance.

During the time I had the continuance I put together, you were talking about relations with other agencies? I got the monsignor that ran the Apostleship of the Sea, I got the Seventh Step Foundation, which is made up exclusively of former felons. And I got the San Francisco public health system (which had a grant program to test people to see what they can do).

I got them all together and came back to that next sentence hearing and said (I had the monsignor in court), "If you'll let him out on his own recognizance, he'll live the days that he's taking the tests with the monsignor and then he'll go live with the Seventh Step counselor, and he'll be looking for work, etc. etc., and when we come back then we can tell you whether we can rehabilitate this fellow or not." By this time the probation officer was starting to show a little interest. And the judge says, "Oh, all right, Rothwell, but you're using up one of your nine lives." So I got him out on his own recognizance.

[Laughter]

Well it's true. If you come in with plans like that and they don't work, they won't permit you to have one the next time. You better make sure that your special plan for a defendant works out or you're through so far as getting another one next time. Which is one of the ways I made this man behave. I told him, "For everyone coming after you, if you don't make it, you're hurting them. It's not me that's being hurt, they are."

So, he went out with the counselor and took the tests and had an automobile accident in the middle of an intersection, the police came and pulled him out of the car and there was arterial blood all over the inside of the car. They took him to Stanford Hospital. The Seventh Step counselor was just scratched up. But this particular defendant was bleeding real blood from the lungs. And a little lady intern looked at him and said, "You know what your trouble is, you have got valves in your heart just like an automobile which are not properly seated. We're going to have to grind your valves for you, because when you're upset they don't seat and they pump the blood back into your lungs. We'll give you a drug and that will make you better but you'll never be right unless you have an open heart operation in which they reseat the valves."

So she said, "I'll tell you what. I'll go up and ask Dr. Shumway if he'll do it." So the intern asked Dr. Shumway at

Stanford. Dr. Shumway said sure. And I scheduled the open heart surgery the day following the next sentence hearing.

At the sentence hearing the judge says, "All right, Rothwell, I give up. I'm going to let him have his open heart surgery and give him six months probation." He had the surgery. Then he no longer needed a reason to go back to prison.

I had him go back and see the judge every Christmas and tell him he was still going straight. Then, since he had worked in a carnival, we employed him as a criminal investigator. And that's how we were able to get witnesses nobody else was able to get, because he knew his way around the back streets in the criminal community, if you will.

I'll tell you something else that shows you the degree to which this man was rehabilitated. Someone up there in the Juvenile Court, I suppose not liking outsiders (like our staff) sticking their noses into the Juvenile Court's business, gave that man the keys to the women's lockup. They knew his whole record. They knew he had a rape conviction. They handed him the keys to the women's lockup.

He came down to the main office and handed them to me. He said, "I think you'd like to know how they're treating us up there," and he gave me the keys. Well, so as far as I know he never committed another crime. I'm not saying he didn't go through a red light or didn't get stopped for this or that. But he never committed another major crime.

HICKE: That's a wonderful story that illustrates so many different things.

ROTHWELL: Well, I tell it for that reason. That would happen in any program in which there was enough staff with enough experience and knowhow and decent ability to try cases so that they see all the facets and recognize what the rewards are turning the people around if you can.

A Bank Robbery

ROTHWELL: I could bore you to death with more.

MEYER: I won't be bored.

ROTHWELL: You won't?

HICKE: Why don't you proceed, if you have enough water [indicates glass on table].

ROTHWELL: Oliver Carter was the chief judge of the U.S. District Court at the time this next story is laid. And he heard about what happened with individual I have just told you about. Oliver Carter was a man who, incidentally, I neglected to say, was extremely helpful in setting our program up. I was on the bus coming down from the City Hall, coming back down here. He was on the bus. "You're Rothwell, aren't you?" "Yes." We discussed the whole program and he was a supporter from then on. A very fine man. You know he tried the Patty Hearst case and he didn't live long afterwards. It actually killed him. He agonized over doing things right.

But anyway, a bank robber comes before Judge Carter and says, "I don't want any goddamn lawyer, I want to plead guilty and get the maximum sentence right now." Well, you know how the system is: it doesn't like being told what to do. It turns out this fellow, when he was about thirty, had robbed a bank and the FBI didn't catch him right away. Thirty days later he turned himself in.

Now he's about fifty, having served his sentence and having gotten out early for good time served. He's an alcoholic. And he's living with a reformed alcoholic, a woman who had property. He was a repairman and general cleanup man, and going to AA [Alcoholics Anonymous].

Apparently he got sick of all that, because he went down to a bank with a great big note about the size of this briefcase which says, "Give me all your fucking money." He stands in line with that note upside down and nobody sees it. [Laughter] He gets up to the teller and slaps it down and the teller is on her first day after training, a little Chinese lady. And it's upside down. So she takes it and turns it around and goes "ahhhh" and faints. [Laughter] So the next teller comes up, hands him the bait money and he goes walking out of the bank. His gun turns out later to be made of soap and painted black. He walks out of the bank, he's drunk you know. He walks out of the bank counting the money. [Demonstrates]

HICKE: Throwing it up in the air and catching it.

ROTHWELL: Well, the bank manager comes up and says, "Now you just give me that money." And he takes the money and takes the soap gun and arrests him. [Laughter] Bank robbers are quite a lot.

At any rate, Jim Hewett, who at that time headed the staff in our Federal Criminal Defense office, and Oliver Carter decided that they were going to have a case like I had because they believed they could rehabilitate this fellow. So instead of sending him to prison, they put him on probation on the condition that every morning he go up to the U.S. Probation Office and let the probation officer drop an Antabuse pill in his mouth and make him swallow it.

HICKE: Drop a what?

ROTHWELL: Antabuse pill. That's a pill that makes you not want to drink.

HICKE: OK.

ROTHWELL: So he did that and they were talking around the court house about how they had taken this hopeless drunk and turned him around. He was back helping his girlfriend and going to AA and he was going to be all right.

The probation officer, being well-meaning but perhaps not too streetwise, decided this is such a fine man I can trust him to buy his own Antabuse. So he went down and bought aspirin instead of Antabuse and every morning the probation officer put an aspirin in his mouth. Soon the effect wore off. [Laughter]

And then, somehow he got a gun and he got drunk and he went up to the girlfriend's apartment house and shot the locks off all the doors, shot out all the windows, shot out all the lights, swiss cheesed the ceiling as you might expect combat troops to do if they think somebody is up on the next floor. Shot the ceilings, corners and everything, until he ran out of ammunition. Then he was arrested and brought back to court. Oliver Carter said, "Well, I have no alternative," and sentenced him to prison for a substantial term. The defendant wouldn't say anything.

But when it was over with, and he was being taken into the custodial facility through the door, he turns around and looks at Judge Carter and he says, "I told you I wanted to go to prison." So that was the end of that effort.

HICKE: That was a determined man.

ROTHWELL: He had his way. So that's one we failed on. We didn't turn him around. I just want you to understand that contrary to

the impression I may have made, we could not rehabilitate everybody. You can only get to a few of them, but enough to make it worthwhile.

Justice For All?

MEYER: So the kind of reformist actions that you see out of the Juvenile Court branch really were in response to that negative evaluation in large part, because otherwise people would . . .

ROTHWELL: Yes. The bar, our board, they all opposed that. You know the federal government can drip, drip, drip. It's large, it's got lots of money, and I think they just decided that they'd rather have peace and since Neighborhood Legal was already running, why not change the Legal Aid Society around so that it does what they want?

In addition to that, the board makeup of Neighborhood Legal was totally different than the Legal Aid Society. The Legal Aid Society, by and large, had representation from every element of the bar and all the community agencies -- we had the chief judge of the court of appeals, of the district court, the bishops, and so forth; we had a lot of representation.

Neighborhood Legal was essentially made up of representatives of various neighborhoods and had neighborhood offices. That sounds great but given \$100,000, \$200,000, a million dollars, if you're going to operate five offices when you can do the job with one, you will have less law staff than if you just have one. In addition they felt that the poor were too much put off by The Establishment, as they put it. Too scared to go downtown to 690 Market Street.

Well, one branch of that proposition is if that's true they have to be educated to overcome their fear if they're ever going to become independent. And the other branch of it is if you don't do that for them and you just keep going out and insisting on solving their problems for them, they will remain dependent. So you've got more money spent on administration compared to what you would spend if you didn't have all those offices. Of course they've had to close some of them as you know. It clearly didn't work out.

But it was an experiment; we learned from it. My only gripe is I genuinely believe, as my generation does, that each individual is entitled to justice. Now not things that he can do himself if he straightens up but things that have to be

done right now or some legal result follows that's not right or just.

And I'll tell you another slight difference between today's philosophy and yesterday's. Again, I don't criticize, I merely point out the difference. All of us thought as professionals, not as social workers, not as people who were trying to bring social change. You give me a case, the client gets the best representation I can provide even if it makes me vomit. I've had clients that made me actually vomit. But I did as well as I could for them -- damn well, the ones I'm thinking of. They got off [laughter]. So we looked at it that way.

Today there's more of a tendency to look at what effect representation will have on society or what a person's case can be used for to change society. There's a place for that. But I'd hate to see the day come in which all you could get in free legal services is representation when your case can be used to accomplish some purpose that a lawyer thinks is a good idea. Then you get help, and if it doesn't, you don't. I don't think that's right. There's got to be a balance. We haven't got it right yet in the United States. We're not there. We have a ways to go.

HICKE: Can you tell me where the Legal Services Corporation fits in?

ROTHWELL: Well, it funds local organizations. It funds them. What it gets and what it does with it is bantered about politically at the national level, you see.

HICKE: It's in the news practically every other day.

ROTHWELL: Yes. We do not have a perfect system. The cases that have terribly serious consequences are going to be criminal cases. There we're much closer providing everybody with counsel. There's no question, we do provide nearly everybody with counsel. The problem there is to make sure you don't have too many cases per lawyer so that you just get nothing but people who go through the motions. You know, a Los Angeles deputy public defender at a convention gets up and says, "I am in charge of arraigning 10,000 drunks a year." That's all he does -- arraign people charged with drunk driving. He stands up in the courtroom where they're arraigned. Well, that's fine, but over a whole career he's not going to have enough breadth to be able to do any more than arraign drunk drivers. So that's the problem when you get terribly heavy case loads.

In federal criminal defense our people took the case from the first interview through the appeal to the Supreme Court of the United States, if there was one. In a very heavily taxed defender office and in the Juvenile Court office that we had, the case load was so high that the person standing in the courtroom gets whatever comes into that courtroom. With us he stayed with it no matter where it went. With the Los Angeles public defender, if the case leaves the courtroom the defendant gets another lawyer because he is assigned to the next courtroom. That's the only way they can do it. Here in San Francisco they have two public defenders in each courtroom. Volume, bureaucracy, how you handle cases, all those things, those are the problems on the criminal side. Money is there because under the law it's got to be paid. So it's a question of management, if you will, and morale, and staff, and all of that.

Now on the civil side, it's a question of not really covering all of the bases. There is a greater distance to go to get everyone services. I don't know what the solution ought to be because I've been away from it for quite a while and involved in teaching. In 1971 I started teaching full-time and I have ever since. I became an emeritus professor in July of 1989 and now I teach when I want to.

For eight years I was a magistrate judge on the United States District Court: the same court the Defender program operated in. I did that while I was teaching full time. Then I had to make up my mind at the end of those eight years, whether I was going to be a judge full time or stay on the faculty, not both. I had handled practically a full-time case load as a half-time magistrate. So knowing the federal government, you can understand that I did that to myself. I promoted myself to a full-time job. So I retired from the court. And since then I have just taught law.

HICKE: OK. Well let's go back to the '60s for a few minutes.

ROTHWELL: Second half of the sixties probably. During the OEO period or prior to it.

HICKE: I think we haven't covered that.

ROTHWELL: OK. Well it lasted, for me, at any rate, it lasted from the middle of '67 until I left in the middle of '71. Four years. And toward the end, I forget when it was that the Youth Law Center got started but I think it must have been around 1970, wasn't it?

HICKE: I have it here.

ROTHWELL: It was either the end of '70 or the beginning of '71. The Youth Law Center is a successor to the Legal Aid Society. It's funded by the Legal Aid Society and other sources. And also the Employment Law Center, or is it separate?

MEYER: The Youth Law Center was started in 1971. The Employment Law Center was '72.

ROTHWELL: Yes, but it's associated with the Legal Aid Society, they're doing fine work. Every once in a while you read about something that they did; it's fine. But as I say, make sure that Neighborhood Legal takes the service cases or the system isn't working properly.

Office Management

HICKE: What were your problems during this time as far as management of the office was concerned? You were hiring people and . . .

ROTHWELL: It didn't take us very long to do that.

HICKE: Was it attractive to people still? Well paid and that kind of thing?

ROTHWELL: Yes, relatively. OEO tried to reduce and successfully did put a cap on salaries and reduced what people were paid.

HICKE: Actually reduce it?

ROTHWELL: Well, they were always mad at me because I made a great deal more than they permitted. But what we did was pay the person in charge of the OEO office the maximum OEO would permit, an amount they would ordinarily permit paying to the head of an entire organization. That was less competitive than the salaries we paid back in the '50s at the Legal Aid Society.

HICKE: Was that a decision of the board? Those salaries were set by the board?

ROTHWELL: Yes, on my recommendation. But yes.

Relations With The Board

HICKE: What were your relationships with the board? What was that like?

ROTHWELL: Let me say that board members always came to board meetings on time. They were always interested. To me, they always did to the letter of the law what would be right for a board of directors of General Motors to do. They ran things in a professional, responsible way. And they always tried to coordinate anything that they did with the proper organizations. I don't think you could have had a more supportive board.

As a matter of fact, one of the high points of my life without regard to what happened in actual programs was to be able to go over and have lunch in the alcove at the bar lounge at 220 Bush Street for a board meeting. The bar no longer has that lounge, they discontinued it. That was part of the history of the San Francisco Bar, that lounge was. And we were up there an awful lot with board, committees, and other things, you know. The best of the San Francisco Bar, I would say.

HICKE: Who on the board do you remember particularly working closely with?

ROTHWELL: Well, all my presidents. After Sam Stewart came Paul Jordan. And after Paul Jordan, let me see. Brent Able I think. Then Lem Matthews. And then George Sears. George Sears either was or still is the managing partner at Pillsbury, Madison & Sutro.

HICKE: I think he's retired from that position. He's still practicing law but no longer managing partner.

ROTHWELL: He retired after he announced that they were going to cut the partners' draw. That was in the newspapers. And then there were other board members, Moses Lasky, who really was responsible for having hired me. He later appeared before me in court when I was a magistrate's judge and I enjoyed that. So did Dick Archer. He's out in Hawaii now. A very able trial lawyer. He was a protege of Herbert Clark.

HICKE: And he's in Hawaii now?

ROTHWELL: The last time I saw him he said he and his wife had both gone to Hawaii and taken the Hawaiian bar and were practicing in Hawaii.

HICKE: What was his contribution? What can you tell me about him?

ROTHWELL: Most of my contacts with him were over litigation issues. Not that we tried cases together but I used to use peer review to good effect. He was a part-time mentor about litigation tactics. He's a good litigator. One of the pleasures that a judge has is to listen to substantial cases in which all the lawyers are good lawyers. That is a real pleasure for the court and for the lawyers. I can think of several instances when Archer was involved in such cases and I won't forget them. That's really the only thing that I miss about sitting on the bench -- the relationship with the lawyers.

HICKE: And during the time you said he was a president . . .

ROTHWELL: No. He was a board member. You asked me what board members I remembered.

HICKE: Yes. OK.

ROTHWELL: I remember all of them, but by and large the organization was run essentially, though we had an executive committee, by the president and by me. I mean the policy got circulated around the board and the board would then gather after we had gotten them briefed and either say yes or no. And I don't ever remember their saying no. What we proposed was well researched and proper for the times. I can assure you that no other legal aid society that I know of in California, and I know of all of them, especially not Los Angeles or San Diego or Oakland, ever was able to do the things this one did at the times that it did them.

HICKE: That's what I wanted to ask. You mentioned that before. Why was that? Why is that?

ROTHWELL: Chiefly because of the board, and its general relationship with the bar of San Francisco. Especially with the larger firms. That was a time when the larger firms had greater weight in bar policy than they do today. Everybody's got something in there today. There was a time in the '60s when the more mature leaders of the bar were upstaged by the younger members of their firms. You had a bar that some would say was a tight little group. But let us just say that the large firms put their weight on the side of public social welfare, what they thought was proper. And their views had general acceptance in the community outside the bar.

HICKE: You're talking about the San Francisco bar now?

ROTHWELL: Yes. And this community in general. On the other hand, when the War on Poverty came along, you see, it stirred things up and got people involved who hadn't been before. And so how they stood on particular issues would be different because of different inputs. I'm not saying that's wrong, just different. Sometimes when things are newly different they're also more unwieldy and not likely to produce results as quickly as the former way. There are advantages and disadvantages to everything.

It's just that change took place. The thing is very few new people were interested in legal aid and legal services before OEO. There's one thing OEO did, it certainly got interest up among lawyers who were not interested prior to OEO.

HICKE: But that was part of this whole '60s change.

ROTHWELL: The change came mostly in the late '60s. It took them until the late '60s to start to have impact.

HICKE: I'd like to get a little better handle on exactly what the relationship was with the bar association. Was there an official relationship?

ROTHWELL: No. The bar association is a professional organization of lawyers. The bar association did not run the Legal Aid Society. Our board of directors was made up of elected members, elected lawyers and non-lawyers. And the big firms were good in providing membership for that board. It was certainly not a bar association function. I don't think it is anyplace in California. It may be in very small towns. They might have the bar actually do these things. The bar association would run lawyer referral panels where people with cases that generate a fee will be referred out to a lawyer. But not the legal service work.

HICKE: Several times you mentioned the support of the bar association; so I just wanted to clarify that.

ROTHWELL: The support of the bar. I don't think I said bar association. Support of the bar means support of lawyers or particular elements in the bar. As an official group we certainly did have the support of the San Francisco bar and the San Francisco Lawyers Club, another club of lawyers, and also the Barristers Club, the young lawyer part of the bar association.

MEYER: Dario De Benedictis?

ROTHWELL: Dario De Benedictis was beyond being a Barrister during my time. He's at least my age, maybe older. I've known Dario for a long time.

HICKE: Can you tell us a little bit about him?

ROTHWELL: He was secretary, I think, before I ever came to work for the Society.

HICKE: Yes, he was there a long time.

ROTHWELL: He had his shoulder to the wheel for many many years on the board and as an officer.

End Tape 2, Side A

Begin Tape 2, Side B

ROTHWELL: The people involved in the generation of the things that we did were the presidents and the chief counsel with input from everybody else, including the community -- you get all kinds of propositions from community agencies and everyone else. I'm talking about who had input with regard to the programs we actually carried out. Much came from Dave Silver before me, and Herbert Clark, and in my time Sam Stewart and subsequent presidents. Sam Stewart was around for the Federal Criminal Defense office. OEO -- we had, I think Brent Able when we first got the grant.

HICKE: Was this in '67?

ROTHWELL: It was in the middle of '67. Was it Paul Jordan?

HICKE: Brent Able was '66 to '67. And then Matthews was '67 to '68.

ROTHWELL: Yes, OK. Then it would be Brent Able, Lem Matthews, and George Sears during the OEO period.

HICKE: Here's a list of officers. Does anything else spring to mind?

ROTHWELL: Of course, you all know [Mathew] Tobriner. He became a Justice of the Supreme Court of California. He was a labor lawyer. [Henry] Evers, here, who was treasurer, was not a lawyer. That's when we started to broaden out. The first officer who wasn't a lawyer, I think probably was Evers.

HICKE: Why was that done? The changing of the . . .

ROTHWELL: Nobody changed anything. They just nominated him and he was elected.

HICKE: It was not a policy decision to . . .

ROTHWELL: Oh, I don't think so, no. They just thought it was time to have one that wasn't a lawyer. [Laughs] No policy discussion was had.

HICKE: What was he?

ROTHWELL: I think he was an investment counselor. See, many of these people are past presidents of the bar. Able is a past president. Matthews was a past president. Jordan was a past president. The presidents of the Legal Aid Society during those years when I was there, except toward the end, were usually past presidents of the bar, or they became presidents of the bar later. Which is just a form of automatic coordination, I suppose you would say. They knew their way around the bar.

Support of the Bar

HICKE: There's a sort of a change between the kind of thing that was done in Herbert Clark's day, which I call community service, a lot of lawyers did it . . .

ROTHWELL: I think so.

HICKE: And then in the '60s it kind of switched over to this pro bono . . .

ROTHWELL: Pro bono by individuals, yes, but chiefly directed at reforming society through law reform cases. Yes. That's right. And OEO and those people who became interested -- I don't want this to be taken the wrong way -- but as soon as there was as much money around as OEO had, a lot of people took an interest in what could be done with it, you see. Before that, nobody in the newly interested groups was interested. And so, then, that brought politicization. It became politicized because what are we going to do with the money? And what we decided to do with the money is spend it on law reform and then somewhere along the line OEO got the idea that "We're going to see if we can stamp the organizations that do anything else out of existence." And they had some success.

HICKE: What was the thought behind the founding of the Neighborhoods?

ROTHWELL: Compete with us. They said it was for law reform, but I think the actual fact was compete with us.

HICKE: That was a political move too, then, are you saying?

ROTHWELL: Partly. Partly.

HICKE: Who wanted to compete with you?

ROTHWELL: Groups that weren't involved and had not been interested in what we were doing. I'll give you an example of the kind of community that you had in those days. It was very much like a revolution. I remember going to speak to an organization out on Third Street someplace. And somebody got up and said, "We're sick to death of the Legal Aid Society. You have to bribe the chief secretary to get a referral to a lawyer. When you go down to the lawyer referral panel of the bar you have to bribe that secretary to be referred to a lawyer. And you have to spend a lot of money to get a referral." There were lawyers in that room who knew me and the bar, knew that the allegations were false, and yet stood there and kept their mouths closed. All I had to say was, "You are mistaken. That's never happened, and I can guarantee it personally." And they just laughed. And here stood these members of the bar whom I had dealt with and knew. And they didn't say one word. So you see, that's much like revolution. That's what that amounts to. It's the kind of thing you see when you have a political revolution. You see people who won't stand up for truth, even though they know what it is, because it isn't politically correct to do so. To use that term in its actual sense [laughs], not its present broader sense.

Now, nobody ever maintained that in what we were doing, or what we ever did, everything was perfect. It couldn't be. But on the other hand, we did raise more money and start more programs than anyone else ever did in San Francisco with the amount of money available. You know, in a relative sense we did more with what we had. I don't see how we could have done anything more unless we shut down representation of individuals and spent the money on having a department that was a second [American] Civil Liberties Union. Well, we have a Civil Liberties Union. And then we had Neighborhood Legal with a grant far bigger than the money we had for our total program.

It would seem to me that if we did that, it certainly would not stand the test of history or time. It would just be abandonment of persons in need. So we didn't do it. So, we're talking about social revolution in the legal community. And in the long run, it'll be for the better. But in the in-between stages [laughs], it left something to be desired.

HICKE: As the chief counsel, you had a lot of battles to fight. It sounds like . . .

ROTHWELL: Well, what happens is you are at the center of all these tensions in the legal system. They're not bad tensions, they force making decisions. But every day you're in the center of them. For example, when a lawyer comes into the office with his client and says, "I demand you set this person free from her husband -- she can't pay me." That's one kind of tension. Because when you've taken that same woman as a legal aid client, and you get a divorce for her, you often had her husband's lawyer complaining to the president of the bar because you did. That's just eligibility tension. Then you have funding tensions, and the "Why don't you take referrals from a Family Service Agency? -- They sent you a woman who wanted a divorce and you said she wasn't eligible." And she didn't by any conceivable means fit the guidelines we followed with regard to ability to generate a fee, not pay it herself, but generate a fee from some source. So they're angry because we said, "Well, her case generates a fee." Those tensions will always be around.

If you ever use the Canadian system of paying lawyers to take these cases, then the tension that arises is we want more for what we're doing -- just like Medicare. And the fund won't be large enough. And there are all these other tensions. That's what you have when you don't have a benign king running a dictatorship. If you can find one of those, great. But when you try to replace him, you might come up with Hitler.

Other Legal Aid Societies

HICKE: What kind of relationship did you have with other legal aid societies both in the state and in the nation?

ROTHWELL: In California, we had a California Public Defender and Legal Aid Association, of which I served as the president at one time. I became president after the Federal Criminal Defense office was opened. That's the first time that that organization ever had as a president a person who came from

the civil side, which I did. We'd have a convention once a year. That's the way we got to meet face-to-face and iron out eligibility problems. There's a case in LA and they want us to accept it for service up here. We always did. LA in some ways was not as able as we were because of a monstrous case load and less staff in relation to case load. So, sometimes we'd refer cases down there, and they wouldn't want to take them and would create tensions. You get the same tensions between large service organizations as you do with outside organizations. But those things always got themselves worked out.

Before I went to Oakland, back in the '50s, I remember that a client had filed a bankruptcy proceeding up here, and then moved to LA, so she went through Los Angeles Legal Aid. She had obtained something called an installment petition order, which lets you pay the filing fees in installments. Well, she gave the installments to her boyfriend, who was a drunk, and he drank them up and told her he paid them into Court. Of course, she found out he didn't when they dismissed her bankruptcy proceeding. The court wouldn't reopen it. So LA wanted us to take her case. We did. And the court reopened it. The bankruptcy judge wouldn't, but I took an appeal and got a district court order that her case be reopened. That's an example of a referral. You see, she lived in LA. The problem was here. They sent her up here. I don't know where she got the bus fare; maybe they found an agency in LA to provide her with it. That kind of inter-agency cooperation existed all along. So she was able to discharge all those debts, most of which had been run up by her drunken boyfriend and shouldn't have been held against her, and became employable once more.

A small matter, but an example of what can be done. The lawyer's side of that case is that the next time I went before the bankruptcy judge, he listened to me a little better than he did before I took the appeal. Just like if I get a judge to make an unusual disposition in a criminal case and it works, he'll listen to me the next time I come before him with a request for another unusual disposition. So. That's what rough-and-tumble lawyering is, and I guess that's what my background is: rough-and-tumble lawyering. [Laughs]

HICKE: That's an interesting insight. It's not just the case that you're talking about today, it's what's coming along later that you have to think about.

ROTHWELL: Especially if you're in legal services, because you get repetitive cases. You're around the courts all the time and so you're much more visible. The nice side of it is if something good happens, you know, you receive more trust. And then the down side of it is you walk by a particular courtroom and the court clerk comes running out and says, "Hey, Rothwell! We need a pro bono volunteer for this case, and you're around here all the time, so the judge just appointed you." [Laughs] I got a civil rights case in San Quentin that way. He'd filed it himself, and I was then appointed his lawyer.

HICKE: What other questions have you got, Sandi?

Personnel

MEYER: I was actually curious about Elda Pardini. I've just seen her name so much. Was she a lawyer? Was she . . .

ROTHWELL: Elda Pardini was born in Padua, Italy. She emigrated over here and went to San Francisco Law School and got a degree the year that the bar exam was first put into effect. I think that would be 1928. Up to 1927, if my memory is correct, you'd be admitted on motion after finishing law school. After that year, you had to take the bar examination. So, she was admitted in 1928, and came to the Legal Aid Society sometime World War IIish, or just before it, when the defense buildup was beginning and lawyers were going off to the military. So, she became employed when Alex Sheriffs was Chief Counsel, and stayed on until she retired, I believe in 1970. She's no longer living. Her son is a lawyer. He's a Hastings graduate, I see him occasionally. She was married to a San Francisco lawyer. She uncomplainingly handled an awful lot of service cases in the areas in which she was especially qualified.

It's hard not to become burned out. You put a young lawyer in the Attorney General's office and have him representing the state in appeals of criminal cases, and in about six months' time, he'll suffer from burnout. He's worked so hard on the same issues over and over.

Well, you get the problem of burnout on a daily basis in the kind of legal aid work I'm talking about. I mean, people do get burned out unless they really believe in what they're doing, and manage not to. Not everybody could do civil legal aid work without burnout. They become alcoholics, or fail to really do their jobs. You have a constant problem because of the heavy, daily, number of new clients. And then to get your

court appearances scheduled and try the cases and somehow not put too much of a load on the other people who are accepting cases while you're away.

HICKE: How would you deal with that as chief counsel?

ROTHWELL: You just live from day to day. Schedule yourself . . .

HICKE: I mean as chief counsel, how did you deal with that in others?

ROTHWELL: I guess because I'm an idealist, I suppose, and it rubbed off on them. [Laughter] I made it rub off on them.

HICKE: A little inspiration?

ROTHWELL: Yes. Elda Pardini was there when I came to work for the Legal Aid Society, and she managed to accommodate perfectly well when I later headed it. The woman was an unsung heroine in a way. There are those who would criticize her, but if anything it was because she had a direct and sharp tongue. And sometimes that would annoy people. She'd say exactly what she thought. But if you listened and followed her advice, she pretty nearly always got you what you were entitled to.

HICKE: So she was effective as . . .

ROTHWELL: Yes. Now fairly, I don't think we could have sent her up to try criminal cases. I don't think she could have gone up and defended in the Juvenile Court. She could for individual cases, but an all-juvenile case load was not what she was accustomed to. She was mature when these programs came along. So that to try and make her change her spots then for no good reason, well -- maybe she would have. I don't know. But I didn't feel that we ought to. Nor did she ask nor demonstrate any interest in switching programs. But there was a time when the Veterans' Administration wouldn't pay veterans benefits for a child unless it had a guardian. And I don't know how many guardianships that she managed to process just to accommodate that one particular policy. It's a small thing, but . . .

HICKE: Not to the children.

ROTHWELL: Not to the people involved, no. Every once in a while I'd hear, "Well, all you do is handle domestic relations cases." Apparently 20 percent of our civil intake was domestic relations cases. But any one of us could stand your hair on end with some of those domestic relations cases.

A good example would be the case of an Iranian who came over here on a student visa to get a degree at Cal [University of California]. He married an American woman. And that, of course, permitted his status to change. And then when she got sore at him, she filed an annulment action charging in the annulment that he had married her only so he could stay in the United States, which was really not true. She never bothered to serve him with the papers in the suit, but did serve them on the Immigration and Naturalization Service. And they picked him up. They were going to deport him.

Well, that case took a lot of work. We had to take an immigration appeal because the hearing officer ordered him deported. The appellate body reversed and allowed him to stay here until he could finish defending the annulment action. She lost the annulment action, and he was granted a divorce, for her misconduct.

All right. Then Immigration said, "Well, he's illegally here, but he's a well-motivated person. You proved in the state court that he was in the right, so we'll let him stay until he obtains his degree, and we'll permit his voluntary departure." He went back to Iran when he got his -- I think he got a Ph.D.

Well, there was a lot of work in that case. In those days, you had to be admitted to practice before the Board of Immigration Appeals. I had to take their cottonpicking exam and get admitted and prepare and file a brief, etc. And then I had to defend against one of San Francisco's finest in the annulment action.

HICKE: Who was that?

ROTHWELL: Oh, I don't have any idea now. Too many of them.

HICKE: Oh, I see. Yes.

ROTHWELL: But anyway, I ended up successfully getting him the divorce and having the annulment end in a judgment for defendant. He didn't defraud her.

You may find it interesting that there's a field of law called Conflicts of Law. A conflict takes place when laws of different jurisdictions are in conflict with each other. Which one are you going to follow? Well, when it comes down to the status of a family, the law of the domicile predominates, which would be California in this case. So, if

the California court decides that this man has the status of having been married and is now divorced, it would be difficult for the Immigration Service to go behind that judgment and find otherwise, or they'd be denying a perfectly valid state court judgment which is binding on them legally.

This is why we did it the way we did. Stopped the deportation and then took up the civil suit in order to declare his status to be what he claimed it was, which then would bind Immigration. Actually, they didn't fight about the conflict rule. They accepted it.

HICKE: Well, we've kept you talking quite a while. Do you think of anything else that we should cover?

More of the Juvenile Court Program

MEYER: One more question?

ROTHWELL: Sure.

MEYER: Under the Juvenile Court program, out of what happened there, what are your fondest recollections?

ROTHWELL: Well, my fondest recollection is the case of the Muni railway coin boxes in San Francisco. That case brought everything together, all the usual services plus it brought someone to the case who was in the process of rehabilitation in an occupation he was absolutely fitted for -- our former criminal who'd gone straight made a marvelous criminal investigator.

That case is probably my fondest memory. But there were countless cases. With my particular bent, I had to go up there and represent some juveniles. I had on an occasional basis before. But I went up there and sat in on the first appearance calendar.

And one of the things that touched me was that in order to keep the kids from picking the chairs and the tables up and throwing them at the judge they used large benches. So a large kid couldn't possibly pick the bench up. You'd get a prosecutor who was standing up beyond the defendant's bench. The judge up on his bench, and the bench I'm talking about with a big table in front of it. And I was at the left end of the defendant's bench. And it might have been, oh, twelve feet long. They'd let a kid out of the lockup and he'd sit down on that bench. And one after another as they'd come in one by one, they'd sit down on that bench. I had talked to

them in the lockup before. And they'd slide the full length of that bench -- juveniles often are small for their age, for some reason or another kids that are small for their age seem to get in trouble more often than large ones, but once this little, tiny kid, I'll never forget, slid the whole length of the bench, and he just leaned against me. He didn't say anything to me. Just leaned against me, you know, his only friend in the court. He was a little dead-end kid. There were other touching things.

The judge looked at that kid, and said, "Now, Johnny, you've been here before. What about this now, Johnny? It says here that you went through a stop light in a stolen car and smashed into a police car." "I borrowed the goddamned car." "Well, what about running into the police car." "Ahhh the fucking throttle stuck." Now, if you saw him, less than five feet tall -- he had to stand up to drive the car. He couldn't sit in the seat and drive it. He couldn't see over the steering wheel. So you can imagine how he got his foot stuck down on the throttle and went through the red light and hit the police car dead center. [Laughs] Excuse my four-letter words, but there's no way for me to tell you what it's really like except to repeat what they actually do and say.

HICKE: Good.

ROTHWELL: At any rate, you see. Little dead-end kid. But yet, not wanting to tell anybody how scared he really is.

HICKE: Yes. Trying to be tough.

ROTHWELL: Well, trying to be tough, but the only friend he's got is the person who just talked to him for a few minutes outside court. So, he sort of leans against me. It's tragic. Juveniles have a capacity, from what I've seen, to commit violent acts that are worse than adults. We had one case in which the juveniles involved didn't like this kid, so they took him out and tried to kill him. They just shot him. Shot him full of 22 calibre bullets and they threw him out in the bushes, up in Napa County. But they were all from down here. And they drove around thinking he might be dead, and then they thought well maybe he isn't, so they went back, re-loaded the gun, and they pumped the entire lower end of his bowels, through the anus, with 22 calibre shells and then stuffed it with dirt and gravel. Adults don't do things like that. So. There are lots of awful, awful things going on out in the real world.

HICKE: It sounds like the Legal Aid Society made a difference, though.

ROTHWELL: Oh, unquestionably. Unquestionably. I could go on the rest of the night telling you about civil cases and criminal cases, and everything else. People whose lives were turned around.

I remember one woman. Tragic. Another failure. A welfare recipient. We got her a divorce. We got her off welfare. We got her into San Francisco State College. She had two children. Managed to care for them while going to school. She got a degree and got a scholarship to go -- I think it was to Nebraska -- to get a master's degree in psychology. This success from a welfare recipient who was struggling. And, you know, we're about to crow. She went insane. Lost her mind completely. Got sent back here and went back on welfare. The last time I saw her, she was walking up Market Street -- this must have been 10 years ago -- I don't think she recognized me, but I recognized her -- yelling at everybody the way people who are paranoid do. That's too bad, you know. So. You don't always succeed.

I'm not sure this is going to be a very good tape, because I've jumped all over the place.

HICKE: That's the way of oral history.

ROTHWELL: Well, a little more time I suppose I could have planned it better, but when you look over the tape and if you want to do it once again, no reason you can't, you know.

HICKE: You've told us some good stories that illustrate the kinds of things you did, and you've given us a lot of the organizational problems and how the Legal Aid Society has evolved. We skipped around chronologically, but that's all right.

ROTHWELL: That's partly my fault. I kept jumping ahead and backwards. Like fast forward and fast backwards.

HICKE: Well, sometimes it's better to do it topically then try to stick to this year we did this and the next year we did that.



So I think this was great. And I really do thank you very much for coming.

ROTHWELL: Well, you're entirely welcome.

Transcribed at Morrison & Foerster by Ginny Martinelli,
David Page, Silvia Sequiera, and Mary Whitten.



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